

## REMARKS

Claims 1, 5, and 9 have been amended. New Claims 15 and 16 have been added. Claims 2-3, 6-8, and 10-14 have been canceled. Claims 1, 4-5, 9, and 15-16 remain in the application. Drawing sheet 3/3 (FIG. 8) has been changed to correct a reference numeral error. Page 1 of the specification has been amended to correct a terminology error. No new matter has been added. Reexamination and reconsideration of the application as amended are respectfully requested. The Examiner's comments are shown in bold.

### *Claim Objections*

**Claim 10 is objected to under 37 CFR 1.75(c), as being of improper dependent form for failing to further limit the subject matter of the previous claim. . .**

The Applicant has canceled Claim 10.

### *Claim Rejections - 35 USC § 102*

**Claims 1, 5, 7, 8 and 10 to 14 are rejected under 35 U.S.C. 102(b) as being anticipated by Landvik et al (US 6,159,574). . .**

The Applicant has canceled Claims 7, 8 and 10-14.

#### Regarding Claim 1:

The Applicant respectfully requests that the Examiner revisit the rejection of Claim 1. The preamble of Claim 1 has been amended as to form, and step (c) has been narrowed to recite the limitation "for the purpose of obtaining a preferred firmness". As such, in its amended form Claim 1 now includes the following limitations which are not disclosed expressly or inherently in Landvik:

*(c) for the purpose of obtaining a preferred firmness, the user selecting one of said first firmness and said second firmness; and,*

*(d) the user placing said topper on top of said bed so that said sheet corresponding to said selected firmness faces upward.*

The object of the method recited in Claim 1 as amended is to provide a user with a firmness option, by enabling the user to select one of two firmnesses. Landvik does not disclose these claim elements. In fact, Landvik expressly teaches away from turning over the laminated support of that invention. In col 3 lines 63-67 Landvik states that it is either (1) the side of the support which has the visco-elastic foam layer, or (2) the softest visco-elastic foam layer, which is arranged to contact with a person's body. "As a result, the support does not need to be turned, as is customary with hospital mattresses, for example". Therefore in accordance with MPEP 2131 (all claim elements not taught), the Applicant submits that Claim 1 as amended distinguishes from Landvik and should be allowable.

Regarding Claim 5:

All of the original subject matter of Claim 5 has been deleted from the claim. In its place the following limitation has been added:

*in (b), said first sheet and said second sheet being of equal thickness.*

This limitation is nowhere disclosed in Landvik. The overlay of Landvik (FIG. 2) has in one embodiment a 10mm top layer and a 60mm bottom layer, and in another embodiment a 70mm top layer and a 80mm bottom layer. These specific layer thicknesses were specifically selected by Landvik as the preferred embodiments of his invention. Neither of these embodiments have first and second sheets of equal thickness as is now recited in Claim 5 as amended. Were Landvik to be modified to the equal thickness claimed in the present invention, it would both change the principles of operation of the Landvik support, and render that invention unsatisfactory for its intended purpose. Therefore in accordance with MPEP 2131 (all claim elements not taught), the Applicant submits that Claim 1 as amended distinguishes from Landvik and should be allowable. Additionally, Claim 5 depends from allowable Claim 1 and is therefore allowable.

### ***Claim Rejections - 35 USC § 103***

**Claims 4 and 9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Landvik et al (US 6,159,574). . .**

**Regarding Claims 4 and 9:**

Claims 4 and 9 recite the limitations:

*said first sheet fabricated from 10 ILD 4 lb memory foam; and,*

*said second sheet fabricated from 20 ILD 5 lb memory foam.*

The 4 lb and 5 lb densities produce a topper having very unique properties, and as such do in fact comprise a particularly critical feature of the present invention. 5lb. memory foam is more temperature sensitive, heavier, usually stiffer and bounces back more slowly. Conversely, 4lb. memory foam is less temperature sensitive and less dense, softer, and a little less supportive. The combination of these two densities was developed through extensive testing, and was found to result in an optimum level of comfort. The 4lb/5lb combination provides users with a way to make their mattress feel more comfortable with a mattress topper which has either (1) a layered feel of softness over a more supportive firm layer, or (2) a layered feel of firmness over a less supportive soft layer. For example, when a 4 lb density first sheet is place over a 5 lb density second sheet, the first sheet provides a soft feel which rapidly conforms to a user's body, while the second sheet provides a firm feel which more slowly conforms to a user's body. No other combination of densities result in a topper which is as comfortable as that of the present invention.

The Landvik specification teaches a wide variety of combinations of foam densities which range from 3 kg/meter<sup>3</sup> (.186 lb) to 120 kg/meter<sup>3</sup> (7.44 lb). For example Landik teaches 110 kg/meter<sup>3</sup> combined with 85 kg/meter<sup>3</sup>, 83 kg/meter<sup>3</sup> combined with 3 kg/meter<sup>3</sup>, 35 kg/meter<sup>3</sup> combined with 83 kg/meter<sup>3</sup>, and 35 kg/meter<sup>3</sup> combined with 82 kg/meter<sup>3</sup>. These specific density combinations were purposely selected by Landvik as the preferred embodiments of his invention. However, nowhere does Landvik teach or suggest a topper which contains 4 lb

and 5 lb layers. Were Landvik to be modified to the 4 lb (64.5 kg/meter<sup>3</sup>) combined with 5 lb (80.6 kg/meter<sup>3</sup>) as claimed in the present invention, it would both change the principles of operation of the Landvik support, and render that invention unsatisfactory for its intended purpose. Therefore in accordance with MPEP 2143.03 (all claim limitations not taught), MPEP 2143.02 (no reasonable expectation of success), and MPEP 2143.03 (all claim limitations not taught), with regard to foam density, the Applicant submits that Claims 4 and 9 are unobvious over Landvik, and should be allowable. Also, Claim 4 depends from allowable Claim 1, and is therefore also allowable.

Regarding firmness, the ILD rating is a measure of the firmness of the memory foam. The 25% ILD rating is the number of pounds required to achieve a 25% compression of a 4" thick foam using a 50 square inch indentation. An Example of this is as follows: a 20lb. ILD foam indicates that the material took 20 lbs.of pressure to indent this foam 25%. As with foam density discussed above, the 10 and 20 ILD firmness values of the present invention similarly produce a superior topper. These values were also established through extensive testing.

Landvik teaches firmness values ranging from 10 to 30 N (newtons). The Applicant is uncertain as to what these values mean, and how they relate to conventional ILD values. In any case, Landvik clearly does not disclose or suggest a 10 ILD sheet and a 20 ILD sheet.

The 10 ILD and 20 ILD memory foam sheets of the present invention are not the result of design choice, but rather the result of a testing-derived optimal topper configuration. Therefore in accordance with MPEP 2143.03 (all claim limitations not taught), with regard to ILD value, the Applicant submits that Claims 4 and 9 are unobvious over Landvik, and should be allowable. Also, Claim 4 depends from allowable Claim 1, and is therefore also allowable.

**Claims 1-14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Barman et al (US 6,715,173) in view of Landvik et al (US 6,159,574). . .**

The Applicant has canceled Claims 2-3, 6-8, and 10-14.

Regarding Claim 1:

The arguments offered above under 35 USC 102 and 35 USC 103 regarding Landvik also apply to the above cited Barman in view of Landvik 35 USC 103 rejection. Landvik does not disclose the following elements of Claim 1 as amended:

*(c) for the purpose of obtaining a preferred firmness, the user selecting one of said first firmness and said second firmness; and,*

*(d) the user placing said topper on top of said bed so that said sheet corresponding to said selected firmness faces upward.*

In fact, Landvik expressly teaches away from turning over the laminated support of that invention. In col 3 lines 63-67 Landvik states that the it is either (1) the side of the support which has the visco-elastic foam layer, or (2) the softest visco-elastic foam layer, which is arranged to contact with a person's body. "As a result, the support does not need to be turned, as is customary with hospital mattresses, for example."

Barman does disclose turning of the comfort unit. However the purpose of the turning is not to obtain a different firmness. Rather the purpose is to "be flipped over or fluffed back to its original state", col 3, lines 37-38. It would be impossible to achieve a different firmness with Barman since the Barman comfort unit is symmetrically constructed wherein both sides having the same firmness. Barman teaches that "the entire feel and function of the sleep system can be altered by simply exchanging the comfort unit with a different comfort unit having significantly different support and functional characteristics", col 6, lines 16-19. As such, Barman specifically teaches away from turning the comfort unit to achieve a different firmness.

Finally, modifying the comfort unit of Barman to incorporate the dual layer feature of Landvik would both change the principles of operation of Barman, and render the Barman unsatisfactory for its intended purpose. The Barman specification in cols 5 and 6 goes into great detail as to the nature and advantages of the specific construction and elements of the comfort unit. One of the cited elements is a comfort unit of symmetrical design having two equally firm sides. To replace the Barman comfort unit with the dual layers of Landvik would destroy these desired features of Barman. As such, there would be no motivation to modify Barman in view of Landvik.

Additionally, changing Barman to incorporate the dual layer feature of Landvik would change the principle of operation of Barman, which would also lack motivation to modify.

Therefore in accordance with MPEP 2143.01 (no motivation or suggestion to modify), MPEP 2143.02 (no reasonable expectation of success), and MPEP 2143.03 (all claim limitations not taught), the Applicant submits that Claim 1 as amended is unobvious over Barman in view of Landvik, and should be allowable.

#### Regarding Claims 4 and 9:

The arguments offered above under 35 USC 103 regarding Landvik also apply to the above cited Barman in view of Landvik 35 USC 103 rejection. Also, as previously stated, the Barman invention specification in cols 5 and 6 goes into great detail as to the nature and advantages of the specific construction and elements of the comfort unit. To replace the Barman comfort unit with the dual layers of Landvik would destroy these desired features of Barman. Were Barman to be modified to include the dual layer principle of Landvik, and furthermore modified to the 4 lb combined with 5 lb density as claimed in the present invention, it would both change the principles of operation of the Barman comfort unit, and render that invention unsatisfactory for its intended purpose. Therefore in accordance with MPEP 2143.01 (no motivation or suggestion to modify), MPEP 2143.02 (no reasonable expectation of success), and MPEP 2143.03 (all claim limitations not taught), the Applicant submits that Claim 4 as amended is unobvious over Barman in view of Landvik, and should be allowable. Additionally, Claim 4 is dependent from allowable Claim 1, and is therefore also allowable.

#### Regarding Claim 5:

As was previously pointed out in the 102 argument above, Landvik does not teach or suggest first and second sheets of equal thickness. And, as was also pointed out above, the comfort unit of the Barman as described in specification in cols 5 and 6 goes into great detail as to the nature and advantages of the specific construction and elements of the comfort unit. One of the cited elements is a comfort unit of symmetrical design having two equally firm sides. Modifying the comfort unit of Barman to incorporate the dual layer feature of Landvik would both change the principles of operation of the Barman invention, and render the Barman unsatisfactory for its

intended purpose. Therefore in accordance with MPEP 2143.01 (no motivation or suggestion to modify), MPEP 2143.02 (no reasonable expectation of success), and MPEP 2143.03 (all claim limitations not taught), the Applicant submits that Claim 5 as amended is unobvious over Barman in view of Landvik, and should be allowable. Additionally, Claim 5 depends from allowable Claim 1 and is therefore also allowable.

New Claims 15 and 16:

New Claims 15 and 16 recite (1) the equal thickness, and (2) the specific ILD and density limitations of the present invention. For the reasons previously stated, these limitations are both novel and unobvious with respect to the cited prior art references.

Drawing FIG. 8 on drawing sheet 3/3 has been amended to correct a reference numeral discrepancy. Item 22 has been changed to item 24, and item 24 has been changed to item 22. The description of FIG. 8 on page 7 of the specification supports this correction.

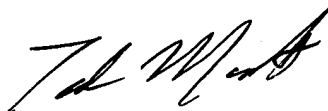
The BACKGROUND OF THE INVENTION has been amended to correct a terminology error. As is commonly known in the industry, ILD stands for indentation load deflection rather than internal linear density.

A \$510 fee for a three month extension of time is included herein.

Form PTO-948 was not included in the Office Action, therefore the Applicant assumes that the drawings are acceptable.

In view of the above, Applicant respectfully requests allowance of all the claims remaining in the application.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Ted Masters", written in a cursive style.

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**B. Amendments to the Drawings:**

Please replace drawing sheet 3/3 with amended drawing sheet 3/3 included herein.

3/3

Fig. 7

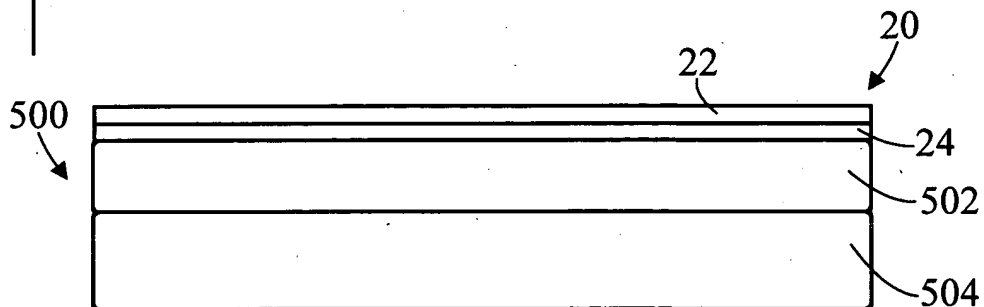


Fig. 8

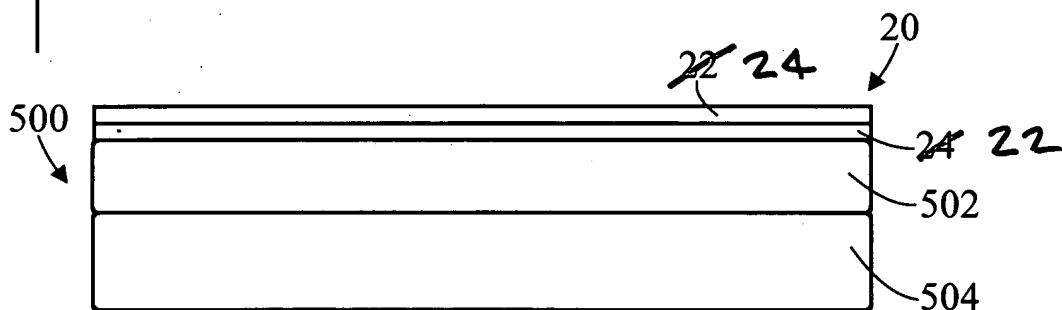


Fig. 9

